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MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1976

No. ....

**76-627**

CABLE-VISION, INC., a Florida Corporation, and TELE-  
MEDIA COMPANY OF KEY WEST,  
Its Successor in Interest,  
*Appellants,*

vs.

WILLIAM A. FREEMAN, JR., HARRY S. PRITCHARD,  
JOHN W. PARKER, HARRY HARRIS and WILLIAM  
CARTER, As and Constituting THE BOARD OF COUNTY  
COMMISSIONERS OF MONROE COUNTY, a Political  
Subdivision of the State of Florida,  
*Appellees.*

ON APPEAL FROM THE SUPREME COURT  
OF THE STATE OF FLORIDA

## JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE SUPREME COURT  
OF THE STATE OF FLORIDA

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**JURISDICTIONAL STATEMENT**

Appellants appeal from a Judgment of the Supreme Court of Florida dismissing their appeal from a decision of the District Court of Appeal of Florida which upheld the constitutionality of a County ordinance authorizing Monroe County to construct and operate a television translator system in competition with the exclusive rights previously granted to Appellants to provide a cable television system. Accordingly, Appellants submit this statement to demonstrate that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions of law are presented.



### OPINIONS BELOW

The final declaratory judgment of the Circuit Court for Monroe County, Florida, dated March 12, 1974, holding that the County's authorization of a television translator system was not an unconstitutional legislative impairment of obligations contained in an existing exclusive franchise for a cable television system granted to Appellants is not officially reported and is reprinted as Appendix A hereto. The opinion of the District Court of Appeal of Florida, Third District, affirming in part and reversing in part the Circuit Court is reported at 324 So.2d 149 (1975) and is also reprinted as Appendix B hereto. The orders of the Supreme Court of Florida dismissing Appellants' appeal, dated May 27, 1976, and denying reconsideration, dated July 8, 1976, are reprinted as Appendix C hereto.

### JURISDICTIONAL GROUNDS

This is an appeal involving the constitutionality of a County Ordinance of Monroe County, Florida (Ordinance 5-1973) on the grounds that such Ordinance constitutes an impairment of previously existing contract rights contrary to Article I, Section 10, of the Constitution of the United States. The trial court held the County Ordinance valid as not impairing the exclusive cable television system rights previously granted to Appellants. The District Court of Appeal of Florida affirmed the trial court as to that holding, but went further and held that a subsequently enacted statute of the Florida Legislature (Chapter 65-1927, Laws of Florida) converted Cable-Vision's exclusive franchise for a cable television system into a non-exclusive franchise.

Appellants seek to have this Court review the judgment of dismissal of the Supreme Court of Florida, entered on May 27, 1976. The order denying reconsideration was entered July 8, 1976. Notice of Appeal was filed in the Circuit Court in and for Monroe County, Florida, on September 22, 1976, and is reprinted as Appendix D hereto. The time in which to docket an appeal in this matter was extended by this Court on September 27, 1976.

Jurisdiction for review of this appeal is conferred on the Supreme Court of the United States by Title 28, U.S.C. § 1257 (2). The exercise of this Honorable Court's jurisdiction on appeal, where the validity of a statute is questioned on the grounds of being repugnant to the Constitution of the United States, but where the state court has upheld the statute's validity, is sustained by the following cases: *Winters v. People of the State of New York*, 333 U.S. 507, 509 (1948); *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 684 (1922); *Western Turf Association v. Hyman Greenberg*, 204 U.S. 361, 362 (1906). This Court has held that the definition of "statute of any state" as set forth in 28 U.S.C. 1257 (2) encompasses more than simply the laws passed by a state legislature but also includes municipal ordinances such as those involved herein. *King Mfg. Co. v. City Council of Augusta*, 277 U.S. 100 (1928).

### STATUTES INVOLVED

Ordinance 5-1973 of Monroe County, and Chapters 65-1916 and 65-1927, Laws of Florida, are set forth in Appendices E, F and G hereto, respectively.

### QUESTIONS PRESENTED

1. Whether an existing exclusive franchise to provide a cable television system for the benefit of viewers in Monroe County, which includes prohibitions against the County granting competitive rights, either directly or indirectly, is legislatively impaired by the subsequent enactment of a County ordinance enabling the County to directly compete with its franchisee by operating a television translator system communicating the same television programs to the same viewers.

2. Whether the Florida District Court of Appeal's ruling that Cable-Vision's exclusive franchise was converted into a non-exclusive franchise by subsequently enacted legislation and that, therefore, County Ordinance would not impair Cable-Vision's franchise—it being non-exclusive—constituted a violation of Cable-Vision's rights against impairment of obligations of contract under Article I, Section 10, of the United States Constitution.

3. Whether a County Ordinance of Monroe County, Ordinance 5-1973, constitutes impairment of previously existing contractual rights granted to the franchisee, Cable-Vision, Inc., by Chapters 65-1916 and 65-1927, Laws of Florida.

### STATEMENT OF THE CASE

The facts in this case are not in dispute. On March 9, 1965, Monroe County, Florida, granted Cable-Vision, Inc. an exclusive thirty year franchise to construct, maintain and operate a cable television system for viewers throughout Monroe County. A copy of that franchise is set forth as Appendix H hereto. The franchise granted Cable-Vision exclusive rights and it was agreed that in return for the

benefits it would bring to the viewers in the community, Cable-Vision would not be faced with competition either directly or indirectly from other television systems. Since there was apparently some question as to the County's legal authority to grant franchises, the Florida Legislature, in June of 1965, enacted Chapter 65-1916 authorizing the County to grant cable television franchises and expressly ratified the pre-existing exclusive franchise to Cable-Vision. (Appendix F, Section 5). The enactment specifically prohibited the County from granting any new or additional franchise which would

"... have any undue adverse impact upon or which shall seriously interfere with the primary business purpose, operation or income of any then existing licensee or franchise holder or which shall cause an undue adverse impact upon or seriously limit or restrict the normal or natural growth, development or income . . . of any such existing licensee or franchise holder." (Appendix F, Section 5).

During the same session the Florida Legislature passed Chapter 65-1927, which granted Cable-Vision a State franchise to operate a cable television system throughout Monroe County. (Appendix G). The franchise did not specifically use words of exclusivity, but definitely contained substantially the same prohibitions as contained in Chapter 65-1916 against the County Commissioners granting any new or additional franchise rights which would have an adverse impact on Cable-Vision. (Appendix G, Section 8).<sup>1</sup>

1. The existence of these two pieces of legislation may be explained by the fact that Chapter 65-1916 is the enactment of a House-introduced bill, while Chapter 65-1927 resulted from the passage of a Senate bill. Both Acts became law on the same day, June 25, 1965.



After eight years the County Commissioners of Monroe County, on May 22, 1973, enacted Ordinance 5-1973, which authorized the County to construct and operate a television translator system<sup>2</sup> which would transmit the same television signals to the area. Cable-Vision, which had provided and still does provide the citizens of Monroe County with television viewing, strenuously objected to the enactment of such an ordinance since the operations of a translator system would adversely impair its exclusive rights. The Attorney General of Florida agreed with the position of Cable-Vision and on May 22, 1973, rendered an opinion to the effect that the enactment of such a County ordinance authorizing the operation of a translator system would unconstitutionally impair the previously granted franchise to Cable-Vision.

In reaction to the Attorney General's Opinion, Appellees, on or about October 3, 1973, filed a complaint in the Circuit Court of Monroe County seeking a declaratory judgment to the effect that the County had the power to authorize, construct and operate television broadcast translator stations and that the construction and operation of such facilities would not infringe on or impair the rights of Cable-Vision under its exclusive franchise.

The Circuit Court, by Order dated March 12, 1974, entered its Final Declaratory Judgment, a copy of which

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2. Television broadcast translator station is defined by Federal Communications Commission Regulations as "A station in the broadcasting service operated for the purpose of retransmitting the signal of a television broadcast station . . . by means of direct frequency conversion and amplification of the incoming signals without significantly altering any characteristic of the incoming signal . . . for the purpose of providing television reception to the general public." 47 CFR 74.701. Rulemaking and legislative activities have been instituted which could permit translators to originate programming and retransmit unlimited distant signals.

is appended hereto in Appendix A. That Court held that Cable-Vision's exclusive franchise from the County was validly ratified by the Florida Legislature by means of Chapter 65-1916, Laws of Florida. It further held that the provisions of Chapter 65-1927 could not be construed as superseding Chapter 65-1916 and thereby converting Cable-Vision's exclusive franchise into a non-exclusive franchise since such a construction would constitute an unconstitutional legislative impairment of an existing contractual right. Nevertheless, the Court concluded that exclusive franchises must be strictly construed, and what Cable-Vision had received "was *not* an exclusive franchise to furnish all forms of television reception, but rather it was an exclusive right to furnish cable television services only." Consequently, the County's authorization of a translator system was held not to be a legislative impairment of an existing contract between the County and Cable-Vision.

On appeal, the District Court of Appeal of Florida, Third District, held that Chapter 65-1927, Laws of Florida, being later enacted, converted Cable-Vision's exclusive franchise into a non-exclusive franchise and that, therefore, the County ordinance could not be construed as impairing any obligations to Cable-Vision under such a non-exclusive grant. Thus, the District Court of Appeal ended up affirming the conclusion of the Circuit Court, but did so by changing the character of the County's obligation to Cable-Vision. Cable-Vision sought appellate review by appeal in the Florida Supreme Court, which granted the motion of Monroe County to dismiss the appeal, and rehearing was denied by the Supreme Court of Florida by its Order dated July 8, 1976. It is from that judgment that this appeal is sought.

### How the Federal Questions Were Raised

The constitutional issues presented here were first raised by Appellees in their Complaint in which the County alleged that Ordinance 5-1973 "... would not result in an impairment of the franchise of the defendant Cable-Vision, Inc. . . ." In its answer, Cable-Vision asserted that the Ordinance constituted an unconstitutional impairment of previously existing contractual rights. The Circuit Court resolved the constitutional issue by concluding that Appellants' exclusive right to provide cable television service must be strictly construed and would not be impaired by the operation of non-cable translator services. The Court did, however, find that to interpret the second legislative enactment as depriving Cable-Vision of an exclusive franchise for cable television would have the effect of unconstitutionally impairing the obligations of an existing contract.

On appeal the District Court of Appeal addressed these issues saying:

"The first issue for our consideration is whether Cable-Vision has an exclusive franchise to furnish all forms of television in Monroe County, stemming, not only from the agreement granting the franchise, but from legislative enactments under Chapters 65-1916 and 65-1927, Laws of Florida. If this be so, then the county's resolution to construct, maintain and operate television broadcast translator stations would be invalid because it would violate the terms of such legislative enactments and, in addition, the ordinance would be an unconstitutional impairment of the obligations of an existing contract. *Jarrell v. Orlando Transit Co.*, 1936, 123 Fla. 776, 167 So. 664.

\* \* \*

Since Chapter 65-1927 was the last expression of the legislature as far as the franchise enjoyed by the appellant is concerned, and since that act only granted a nonexclusive franchise whereas Chapter 65-1916 sought to grant or ratify an exclusive franchise granted by the appellee, the question arises as to which of the laws is paramount and which should be construed as controlling.

\* \* \*

In view of the fact that Chapter 65-1916 provides for an exclusive franchise and Chapter 65-1927, which came after it, provides for a non-exclusive franchise . . . the franchise itself was not exclusive as to all forms of television reception. The franchise not being exclusive, it follows that the county agreement of 1965, and the legislative enactments do not give Cable-Vision an exclusive franchise. . .

\* \* \*

From the language of Chapter 65-1927, Cable-Vision only has a franchise to operate a cablevision system. Therefore, there can be no prohibition by virtue of the 1965 agreement and Chapters 65-1916 and 65-1927, for the county to construct, operate and maintain television broadcast translator stations. Cable-Vision contends that county ordinance 5-1973, authorizing translator stations is a constitutional impairment of contract. This is not so because the trial court found, after taking testimony, which was uncontroverted, that there was a distinct difference between a cablevision system and the operation of a television broadcast translator system."



## THE QUESTIONS PRESENTED ARE SUBSTANTIAL

### I. The Finding of the Florida District Court of Appeal That Cable-Vision's Exclusive Franchise Was Converted Into a Non-Exclusive Franchise As a Consequence of Subsequently Enacted Legislation Deprives Appellants of Their Guarantee Against Impairment of the Obligations of Contract.

To permit the Florida District Court of Appeal's construction to Chapter 65-1927, Laws of Florida, to stand would deprive Appellants of protection against legislative impairment of franchise obligations in violation of Article I, Section 10, of the Constitution of the United States. By construing Chapter 65-1927, Laws of Florida, as converting Appellant's exclusive franchise to provide cable television services into a non-exclusive franchise, the Florida Court has been able to uphold the constitutionality of Monroe County Ordinance 5-1973, which authorizes the County to engage in direct competition with its franchisee in supplying television and other signal distribution services to the citizens of Monroe County. Article I, Section 10, of the Constitution was intended to preserve the principle of the inviolability of contracts against just such legislative interference, whatever form it may assume. *Murray v. Charleston*, 96 U.S. 432, 24 L.Ed. 760 (1877).

In order to support its conclusion that the franchise granted to Cable-Vision was non-exclusive—and, therefore, not impaired by the County ordinance—the Florida Court found that a conflict existed between Chapter 65-1916, Laws of Florida, which ratified the exclusive franchise agreement between the County and Cable-Vision, and Chapter 65-1927, Laws of Florida, which granted a state franchise to Cable-Vision, but which omitted the

word "exclusive". Finding such conflict the Court then concluded the "last expression of the legislative will" to be controlling, thereby invalidating the previously granted exclusive franchise and substituting a non-exclusive franchise.

The Court erred in finding Chapter 65-1916 and Chapter 65-1927 to be in conflict. Chapter 65-1916 accomplished two purposes. It gave Monroe County the power to grant franchises for the operation of cable television and similar communication systems and specifically ratified prior agreements in the nature of a franchise. This legislation ratified the County's previously granted exclusive franchise to Cable-Vision.

Chapter 65-1927 in no way attempted to alter the obligations created and ratified by Chapter 65-1916. It simply provided a grant of a state franchise to Cable-Vision which did not employ the specific word "exclusive".<sup>3</sup> The two franchises exist in parallel, and co-exist without conflict.<sup>4</sup> There is no "positive repugnancy" between the Acts. In fact, a reading of the virtually identical provisions of §5, Chapter 65-1916, and of §8, Chapter 65-1927, with their broad protections, can only lead to the conclusion that even in the case of Chapter 65-1927, the Legislature fully intended the grant to be free from any future com-

3. Although the word "exclusive" was not used, the Legislature imposed broad restrictions upon the County prohibiting it from giving any rights which would in any way compete with Cable-Vision's business—the essential element of an exclusive right.

4. It would appear that separate legislation was introduced in the Florida House and Senate seeking to resolve any question concerning the County's authority to grant a franchise to Cable-Vision. The House approach was ratification of the previously granted exclusive franchise while the Senate approach was a direct State franchise to Cable-Vision. The Florida Legislature, apparently seeing no conflict between the two, passed both the House and Senate versions, and they became law on the same day.

petition. Under the circumstances, where a "positive repugnancy" does not exist, the rule "against repeal by implication" should govern. *State v. Board of Public Instruction of Escambia County*, 113 So.2d 368 (S.Ct.Fla., 1959).

If, on the other hand, we presume, as the District Court of Appeal did, that an irreconcilable inconsistency does exist between Chapter 65-1916 and Chapter 65-1927 regarding the exclusiveness of the franchise, then the question becomes whether Cable-Vision's exclusive franchise agreement with the County, as ratified by Chapter 65-1916, is protected against impairment by subsequent legislation by Article I, Section 10, of the United States Constitution. The answer, Appellants submit, is obviously yes, although the Florida District Court of Appeal, relying upon "the last expression of legislative will", failed to even consider the Constitutional implications of that construction.

The exclusive franchise to Cable-Vision is unquestionably a "contract" subject to constitutional protection against legislative impairment. *City of North Las Vegas v. Central Tel.*, 460 P.2d 835, 85 Nev. 620 (1969). The issue of whether an executed contract (in this case specifically ratified by the state legislature) can be superseded by subsequent legislative action is strikingly similar to the question presented to the Supreme Court in *Fletcher v. Peck*, 6 Cr. 87 (1810) wherein the Supreme Court first interpreted the contract clause. This case involved the question of whether an executed contract in the form of a legislative land grant made by the state itself through its legislature could be rescinded by the state, and the Court held that the state was restrained by the provisions of the contract clause.

It would be hard to imagine a more clear example of impairment of obligations of previously existing contracts

than the one presented here. The principal value of an exclusive franchise is its exclusivity; a law which would convert an exclusive franchise to a non-exclusive franchise not only impairs the obligations of a contract, but totally destroys the value of that contract to Cable-Vision.

When considering this question in this case, the Circuit Court for Monroe County held:

"The Court is of the view that the provisions of Chapter 65-1927 cannot be construed as superseding the provisions of Chapter 65-1916 for the reason that such a construction would constitute an unconstitutional construction *in that it would be a legislative impairment of an existing contract or right.*" (Opinion, Paragraph 3) [Emphasis added].

The District Court of Appeal recognized the existence of this issue, but failed to address it directly. If it had, it would have found, as Appellants submit this Honorable Court must, that construing Chapter 65-1927, Laws of Florida, as superseding Chapter 65-1916 and rescinding Cable-Vision's previously granted exclusive contract is repugnant to the guarantee contained in Article I, Section 10, of the Constitution of the United States.

## **II. The Obligations Contained in Cable-Vision's Exclusive Franchise to Operate a Cable Television System Including Legislative Prohibitions Against the County Granting Any Competing Rights Are Impaired by the County's Ordinance Authorizing County Construction and Operation of Television Broadcast Translator Stations.**

It is essential in any case in which legislative impairment of contract obligations is alleged for the considering court to determine precisely the contractual rights which



are entitled to constitutional protection. In doing so this Court is not bound by the constructions of the courts below but may review for itself the terms of the agreement in order to determine the scope of the rights entitled to constitutional protection from legislative impairment. *Shriver v. Woodbine Savings Bank*, 285 U.S. 467 (1932). A thorough analysis compels the conclusion that the bundle of franchise rights held by Appellants is impaired by Monroe County Ordinance 5-1973 authorizing the county to operate television broadcast translator stations.

The March 9, 1965 agreement between Monroe County and Cable-Vision, as ratified by Chapter 65-1916, Laws of Florida, granted to Cable-Vision "an exclusive franchise for the operation of a cable television system in Monroe County, Florida". The term "cable television system" was not defined. Consequently, the courts below gave it a narrow interpretation limiting the the grant of authority to "direct wire reception of television" and concluding that translator services—which do not employ wire but allow the receiver to obtain television signals directly from the air—would not impair the franchise rights. Such a holding is clearly erroneous for a number of reasons.

First of all, the franchise language itself is quite broad as to the services to be performed by Cable-Vision and leads to the inescapable conclusion that more was contemplated by the parties than merely the transmission of television signals by direct wire. Section 1 of the franchise provides as follows:

"Section 1. Effective upon the date of the execution of this agreement Cable-Vision, Inc., a Florida corporation, be and it is hereby granted for a period of thirty years and any renewals and extensions thereof as authorized by the laws of the State of Florida, the right, privilege, license and/or franchise to furnish

direct wire reception of television, radio, music, closed circuit programs, signals and services to the inhabitants of the County of Monroe, Florida, or any person, firm or corporation within said county limits: (1) *programs and services originating in Monroe County and elsewhere which consist of either live, transcribed, recorded, film and/or other means*, (2) *programs and services received by wire, microwave, or cable from outside of the county limits of the County of Monroe, Florida*, (3) *programs and services received by relay*, and (4) *by the means of the establishment of a master antennae, utilizing a master control unit and amplifier and relaying the signals and services directly to the subscriber. . .*" [Emphasis supplied].

From the language of this section it becomes clear that the scope of the activities entitled to the protection of exclusivity ranges far beyond the narrow finding of the courts below.

Perhaps even more important in determining the franchise rights entitled to protection against impairment are the broad prohibitions in the ratifying legislation which prohibit the County from doing anything, either directly or indirectly, which would have "any undue adverse impact upon" or "seriously interfere" with the business of the franchise holder. Section 5 of Chapter 65-1916, ratifying the original franchise, states as follows:

"Section 5. The county commissioners shall not give or grant any new or additional franchise or license rights provided for in this act, which shall tend to lessen or impair the quality or the efficiency of operation of a system or service being offered and used by the inhabitants of Monroe County under an existing franchise or license, or which shall have any undue

adverse impact upon or which shall seriously interfere with the primary business purposes, operation, or income of any then existing licensee or franchise holder, or which shall cause an undue adverse impact upon or seriously limit or restrict the normal or natural growth, development and income, or adaptation to changing circumstances with respect to matters within the ambit of the primary business purpose, operation or income of any such existing licensee or franchise holder, or which shall directly impair or depreciate the value of any property or property right owned by any such existing licensee or franchise holder. The term 'existing licensee or franchise holder' for the purposes of this act shall include those hereafter granted pursuant to this act from and after its effective date, as well as any franchise, license or other agreement in the nature thereof existing at the time of the passage of this act and ratified hereunder."

These prohibitions are part and parcel of the Cable-Vision franchise<sup>5</sup> and demonstrate a very protective approach to Cable-Vision on the part of the Legislature. These prohibitions do not speak only in terms of not franchising other cable television operators, but rather are couched in terms of preventing adverse impact on, serious limitation of and interference with the purpose, operation or income of the existing franchise holder. What could be broader? Nevertheless, the courts below chose to ignore these rights and rely instead upon the narrowest possible construction of the franchise obligations in order to avoid the obvious conclusion that the authorization of translators would have a devastating effect on Cable-Vision's franchise

5. Virtually identical language is contained in the State franchise to Cable-Vision, Chapter 65-1927, Laws of Florida, Section 8.

rights.<sup>6</sup> However, impairment is not a question of degree, but rather, existing obligations of contract are not to be impaired at all. *Ohio State Life Ins. Co. v. Clark*, 274 F.2d 771, Cert. denied 363 U.S. 828 (1960).

Although the franchise speaks in terms of not granting new or additional franchises which have the proscribed effect, this language is equally applicable to competing activities by the County itself. The situation here is directly analogous to that in *Vicksburg v. Vicksburg Waterworks Company*, 202 U.S. 453, 50 L.Ed. 1102 (1906), in which the City of Vicksburg granted to a water company the exclusive right for a 30-year period to erect and operate a waterworks system and then sought to compete against its grantee by building and operating its own competing system. The Court therein held:

"It needs no argument to demonstrate, as was pointed out in the Walla Walla case, that the competition of the city may be far more destructive than that of a private company. The city may conduct the business without regard to the profit to be gained, as it may resort to public taxation to make up for losses. A private company would be compelled to meet the grantee upon different terms, and would not likely conduct the business unless it could be made profitable. We cannot conceive how the right can be exclusive, and

6. The Doctrine of Equivalence, recognized in patent law since 1853 is directly analogous to this situation. *Winans v. Denmead*, 56 U.S. 330 (1853). Where an unauthorized device employs substantially the same results in substantially the same way, such unauthorized device may be deemed an infringement even though not a single claim of the patent can literally be read in the unauthorized device. *Sanitary Refrigerator Co. v. Winters*, 280 U.S. 30 (1929); *Tigreit Industries, Inc. v. Standard Industries, Inc.*, 397 U.S. 586 (1970). Clearly, translators produce the same results as cable television and, therefore, under the theory of the Doctrine of Equivalence would "infringe" Cable-Vision's rights.



*the city have the right, at the same time, to erect and maintain a system of waterworks which may, and probably would, practically destroy the value of rights and privileges conferred in its grant. If the right is to be exclusive, as the city has contracted that it shall be, it cannot, at the same time, be shared with another; particularly so when such division of occupation is against the will of the one entitled to exercise the rights alone. It is difficult to conceive of words more apt to express the purpose that the company shall have the undivided occupancy of the field so far as the other contracting party is concerned.*

\* \* \*

... Any other construction seems to us to ignore the language employed, and to permit one of the parties to the contract to destroy its benefit to the other. We think the court below did not err in reaching this conclusion." 50 L.Ed. at 1111, 1112. [Emphasis added].

In the case at bar the franchise granted by the Court is "exclusive" and the *Vicksburg* case, *supra*, is directly on point and controlling. By granting to Cable-Vision the exclusive right to operate a television system in Monroe County for a fixed period, the County has precluded itself from operating such a system during the term of Cable-Vision's franchise.

Upholding the county's authority to enter the translator business not only impairs the obligations of Cable-Vision's franchise but destroys that contract in its entirety. It is appellants' contention that the Florida courts were in error, and that their decision deprived Appellants of one of the most important protections in the United States Constitution. Furthermore, the questions presented by this appeal are substantial and will have widespread im-

pact throughout the cable television industry. Virtually all cable companies operate under franchises from municipal or county authorities. Most of these franchises, we submit, are couched in terms of cable television rights. If the decision of the Florida court is sustained, then the precedent is established for any franchising body which wants to authorize or engage in a type of television transmission that deviates in the slightest from "direct wire transmission" to totally disregard its previously granted franchise. Such instability in a developing industry cannot be to the benefit of the viewing public or to the cable operators who must invest substantial amounts of capital to bring the viewers the distant signals they desire.

### CONCLUSION

For the reasons herein set forth Appellants urge this Court to review on the merits, with briefs and oral argument, the substantial constitutional issues raised by this appeal.

Respectfully submitted,

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Washington, D.C. 20006

*Counsel for Appellants*

### CERTIFICATE OF COUNSEL

I, MICHAEL G. KUSHNICK, one of the attorneys for Cable-Vision, Inc., a Florida corporation, and Tele-Media Company of Key West, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of ....., 1976, I served copies of the foregoing Jurisdictional Statement on the several parties thereto as follows:

1. On William A. Freeman, Jr., Harry S. Pritchard, John W. Parker, Harry Harris and William Carter, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to their attorneys of record as follows:

Mallory Horton, Esquire, Horton and Perse  
410 Concord Building, Miami, Florida 33130

Paul E. Sawyer, County Attorney for Monroe County  
P.O. Box 571, Key West, Florida 33040

2. On the State of Florida, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorney of record as follows:

Tom Harris, Esquire  
Assistant Attorney General  
Office of the Attorney General  
The Capitol—Department of Legal Affairs  
Tallahassee, Florida 32304

MICHAEL G. KUSHNICK  
ROSE AND KUSHNICK  
919 - 18th Street, N.W.  
Washington, D.C. 20006

*Attorneys for Appellants, Cable-  
Vision, Inc. and Tele-Media Com-  
pany of Key West*

### APPENDIX

### APPENDIX A

CAPTION OMITTED

### FINAL DECLARATORY JUDGMENT

THIS CAUSE came on to be heard before the Court upon final hearing without a jury upon the issues made by the plaintiffs' Complaint for Declaratory Relief and the Answer and Affirmative Defenses filed on behalf of the defendants.

The Court heard testimony offered on behalf of the plaintiffs and particularly expert testimony as to the difference between a cable vision system and a television broadcast translator station. No testimony was offered by the defendants but various documents were offered and received in evidence from each of the parties.

The facts in this case are not in dispute. The plaintiff on March 9, 1965 granted to the defendant an exclusive 30 year franchise to furnish cable television services throughout Monroe County. Since there was some doubt as to the plaintiffs' authority to grant such a franchise, the Legislature of Florida enacted Chapter 65-1916 which in effect ratified the purported franchise of March 9, 1965 to the defendant, CABLE VISION, INC. At the same session of the Legislature, that body passed Chapter 65-1927, the effect of which was a legislative grant of franchise, non-exclusive in nature, to the defendant. The plaintiffs on May 22, 1973 enacted Ordinance 5-1973 which authorized the plaintiffs to construct and operate television broadcast translator stations.



Based upon the issues raised by the pleadings, the testimony and other evidence presented to the Court and after hearing oral argument from counsel for the respective parties and receiving memoranda of law from counsel for said parties, the Court finds and declares as follows:

1. That the plaintiff, County, did not have authority to enact an ordinance nor to grant an exclusive franchise to the defendant for cable television. The reason for this declaration is the fact that the power to regulate occupations and businesses by licensed franchises is a peculiar attribute of state sovereignty. Therefore absent such authority from the Legislature, the actions of the plaintiff in granting a franchise to the defendant was ultra vires and invalid.

2. That Chapter 65-1916, Laws of Florida 1965, which purported to ratify the prior actions of the plaintiff in granting the defendant an exclusive franchise for cable television was a valid enactment by the Legislature of Florida and legally ratified and confirmed the prior invalid action of the plaintiff in granting a franchise to the defendant. This Court is of the view that the Legislature could retroactively ratify and approve a franchise agreement done without previously conferred authority so long as such legislation was not prohibited by the Constitution of Florida. The Court finds nothing in the Constitution of Florida as it existed in 1965 that prohibited the enactment of Chapter 65-1916, Laws of Florida, 1965.

3. That the inconsistency between Chapter 65-1916 Laws of Florida 1965 and Chapter 65-1927 (which made a direct grant of a non-exclusive franchise by the State to the defendant) is apparent on the face of the two enactments and that any inconsistency between the two should be resolved in favor of the provisions of Chapter 65-1927. The Court is of the view that the provisions of Chapter

65-1927 cannot be construed as superseding the provisions of Chapter 65-1916 for the reason that such a construction would constitute an unconstitutional construction in that it would be a legislative impairment of an existing contract or right.

4. That the plaintiff notwithstanding the existence of a valid franchise may itself engage in the business of furnishing television to its citizens by means of television broadcast translator stations. It should be noted that in 1972 the Home Rule Amendment to the State Constitution granted broad powers to counties, including Monroe, to enact ordinances similar to Ordinance 5-1973 relating to the establishment of translator stations and that such Ordinance is within the ambit of the Home Rule Amendment.

This Court does not construe the franchise agreement to prohibit the plaintiff from furnishing to the citizens of Monroe County television broadcast translator station services. This is based upon the principle that exclusive franchises from a governmental body to a private corporation must be strictly construed. The franchise here provides for "direct wire reception of television" and is silent as to the possible use of translator stations.

The actions of the plaintiff in authorizing a translator system was not a legislative impairment of an existing contract between the defendant and the plaintiff so as to render the authorizing ordinance relating to translator stations unconstitutional. Neither Chapter 65-1916 nor Chapter 65-1927 prohibit the plaintiff from engaging in activities which might impair the quality of or the value of the defendant's franchise but only prohibit the plaintiff from granting new or additional franchises to others. Although there may be the suggestion that implicit in the two chapters is a provision that the plaintiff will not compete, nevertheless such suggestion ignores the well-established

principle that public grants are strictly construed and that nothing should pass to the grantee of such a franchise by implication. The reason behind this rule of construction is that the object and end of all government is to promote the common interests of the people, their recreation, welfare and prosperity and it is never assumed that the governmental authority intended to diminish this power. Governments should never be presumed to surrender this power because the entire community has an interest in preserving it undiminished. The Statutes (Chapter 65-1916 and Chapter 65-1927), the existing ordinance 5-1973 and the franchise agreement disclose that what was given to the defendant was *not* an exclusive franchise to furnish all forms of television reception but rather it was an exclusive right to furnish cable television services only.

5. That the final judgment of the Circuit Court of Leon County, Florida Civil Action No. 70-1397, entitled CABLE VISION, INC., a Florida corporation vs. THE STATE OF FLORIDA, is not res judicata of any of the issues in this cause.

DONE AND ORDERED this 12th day of March, 1974.

/s/ Jame W. Kehoe  
Circuit Judge

## APPENDIX B

CABLE-VISION, INC., a Florida Corporation,  
Appellant,

v.

William A. FREEMAN, Jr., et al.,  
Appellees.

No. 74-1408.

District Court of Appeal of Florida,  
Third District.

Dec. 9, 1975.

Rehearing Denied Jan. 22, 1976.

The Circuit Court, Monroe County, James Kehoe, J., entered a final declaratory judgment that county had the power to construct and operate television broadcast translator stations, and cable television corporation appealed. The District Court of Appeal, Nathan, J., held that agreement in which county purported to grant exclusive franchise to cable television corporation was ultra vires and invalid, that statute granting corporation a nonexclusive franchise, rather than previously enacted statute ratifying exclusive franchise, was controlling, that corporation only had a franchise to operate a cable television system, that county ordinance authorizing television translator stations was not a constitutional impairment of the franchise contract granted by the county for the operation of the cable television system, that statutes granting corporation franchise did not prohibit the county from constructing and operating any television broadcast translator stations, and that such construction and operation was not precluded by the lack of a valid county purpose.

Affirmed in part and reversed in part.



**1. Telecommunications (Key) 449**

County ordinance which purported to grant an exclusive franchise to cable television corporation was an ultra vires and invalid ordinance where no state legislation authorized the granting of such exclusive franchise.

**2. Licenses (Key) 5**

The power to regulate occupations and businesses by licensed franchises is a peculiar attribute of state sovereignty which requires state legislation.

**3. Telecommunications (Key) 449**

Statute granting nonexclusive franchise to cable television corporation, which was enacted after statute ratifying county's grant of exclusive franchise, was controlling, so that franchise granted to corporation was nonexclusive. Sp.Acts 1965, cc. 65-1916, 65-1927.

**4. Statutes (Key) 207**

In reconciling inconsistent statutory provisions, any inconsistency should be resolved in favor of the last expression of the legislative will.

**5. Telecommunications (Key) 449**

Where cable television corporation was granted by statute a nonexclusive franchise to operate only a cable television system, statute did not prohibit county from constructing, operating, and maintaining television broadcast translator stations since a television broadcast translator system is different from a cable television system and since there was no evidence that the operation of translator stations could substantially harm the cable television business. Sp.Acts 1965, cc. 65-1916, 65-1927.

**6. Telecommunications (Key) 449**

County had the authority under constitutional self-government and under statute to construct, maintain and operate television broadcast translator stations, despite fact that cable television corporation was granted a non-exclusive franchise to operate a cable television station within the county. Sp.Acts 1965, cc. 65-1916, 65-1927; West's F.S.A.Const. art. 8, § 1 et seq.; West's F.S.A. §§ 125.01, 125.01(1)(f, w), (3)(b).

**7. Telecommunications (Key) 16**

County was not precluded from constructing, maintaining, and operating television broadcast translator stations for lack of a valid county purpose. West's F.S.A. § 125.01.

**8. Counties (Key) 21 1/2**

Determination of what is a county purpose may be expressed or implied in the provisions of a county ordinance, and courts will not interfere with such determination unless it has no legal or practical relationship to a valid county purpose.

---

Madigan, Parker, Gatlin, Truett & Swedmark, Tallahassee, for appellant.

Horton, Perse & Ginsberg, Paul E. Sawyer, Key West, Robert L. Shevin, Atty. Gen., and Tom Harris, Asst. Atty. Gen., Tallahassee, for appellees.

Before PEARSON, HENDRY and NATHAN, JJ.

NATHAN, Judge.

Appellant, Cable-Vision, Inc., brings before this court for review, a final declaratory judgment arising out of a

suit brought in the trial court by the Board of County Commissioners of Monroe County for the purpose of determining the rights of the county to construct and operate television broadcast translator stations.

The facts in this case, and the trial court so found, are not in dispute. The county, on March 9, 1965, granted to Cable-Vision an exclusive 30-year franchise to furnish a cable television system.<sup>1</sup> Apparently, and for good reason, there was some doubt as to the county's authority to grant such a franchise. Consequently, during the 1965 session of the Florida Legislature, Chapter 65-1916 was enacted specifically ratifying the March 9, 1965 franchise.<sup>2</sup>

1. The Agreement entered into between Monroe County and Cable-Vision, Inc., on March 9, 1965:

\* \* \*

"The County of Monroe, . . . does hereby grant to said Cable-Vision, Inc., an *exclusive franchise* for the operation of a cable television system in Monroe County, Florida, under the following terms and conditions:

Section 1. Effective upon the date of the execution of this Agreement, Cable-Vision, Inc., a Florida Corporation, be, and it is hereby granted for a period of 30 years and any renewals and extensions thereof as authorized by the Laws of the State of Florida, the right, privilege, license, and/or franchise to furnish direct wire reception of television, radio, music, closed circuit programs, signals, and services to the inhabitants of the County of Monroe, Florida, or any person, firm or corporation within said county limits . . ." (emphasis added)

2. Chapter 65-1916:

"AN ACT giving to the county commissioners of Monroe County the power to grant franchises or licenses for the establishment, maintenance and operation of community antenna systems, closed circuit or cable television systems, or any other similar communication or distribution systems or services; . . .

\* \* \*

Be It Enacted by the Legislature of the State of Florida:

Section 1. The county commissioners of Monroe county whenever it shall be made to appear to them that the convenience of the public requires the establishment, maintenance and operation within the county of a community antenna system or systems, closed circuit or cable television

(Continued on following page)

At the same session of the Florida Legislature, Chapter 65-1927 was enacted, the effect of which purports to grant a non-exclusive franchise by the State of Florida to Cable-Vision to operate a cable television system in Monroe County for a period of 30 years.<sup>3</sup> The county, on May 22,

Footnote continued—

system or systems, or any other similar communication or distribution systems or services are hereby given the power to grant by resolution a franchise or license to any company, corporation, partnership or individual . . .

\* \* \*

Section 3. The county commissioners under the exercise of the power given by this act may grant an exclusive or limited franchise or license, operating in either a portion or throughout the limits of Monroe county, including municipalities therein. The franchise or license rights contemplated by this act when granted within the purview hereof shall continue in such grantee, or personal representatives, successors, or assigns for the full term granted . . ." (emphasis added)

3. Chapter 65-1927:

\* \* \*

"AN ACT granting to Cable-Vision, Inc., a Florida corporation, the right, privilege, license and franchise, for a period of thirty (30) years for the operation of a cable television system throughout Monroe county, Florida, and all municipalities therein, including the furnishing of direct wire reception of television, radio, music, closed circuit programs, signals, and similar services, together with necessary rights to erect and maintain poles, wires, fixtures, towers, amplifiers, electronic equipment, etc., along the streets, alleys, avenues and highways and other public places throughout the county and all municipalities therein; providing the terms and conditions of such franchise; prescribing charges and service rates; providing for taxes; providing for termination and lease of this franchise and providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

\* \* \*

Section 2. Cable-Vision, Inc., a Florida corporation, its successors or assigns is granted for a period of thirty (30) years and during the period of any renewals and extensions thereof as may hereafter be authorized, the right, privilege, license, and franchise to furnish direct wire reception of television, radio, music, closed circuit programs, signals, and services to the inhabitants of Monroe county, or any person, firm or corporation within said county limits, including the municipalities therein, . . ." (emphasis added)

\* \* \*



1973, enacted Ordinance No. 5-1973 which authorized the county to construct and operate television broadcast translator stations within the county for the purpose of providing direct television reception to its citizens.<sup>4</sup> The trial

4. Ordinance No. 5-1973:

“WHEREAS, the Board of County Commissioners of Monroe County, Florida, have by petition and other means has had called to its attention the unsatisfactory conditions existing in the reception of direct television signals now available to the public in said county, and

WHEREAS, there are no television broadcast stations operating in a close enough proximity to Monroe County to afford any relief from this condition, and

WHEREAS, the Board of County Commissioners of Monroe County, Florida, now has the opportunity to provide the residents of said County with adequate and satisfactory direct television reception through television translator systems, and

WHEREAS, the Board of County Commissioners of Monroe County, Florida feels it should provide its citizens the opportunity to obtain a better life by being more enlightened in the areas of political, cultural, social and educational commentary, available by broader access to the television media, and (emphasis added)

WHEREAS, the Board of County Commissioners feel that educational television is necessary in the development of the educational and cultural background of the children of the County, and (emphasis added)

WHEREAS, the transmission of television signals for direct reception is regulated by the Federal Communications Commission, and

WHEREAS, the Board of County Commissioners is empowered to obtain the necessary license under Section 74.732 of the Federal Communications Rules and Regulations, Volume 3, dated September, 1972, which would allow the Board of County Commissioners to correct this present denial of direct television service to the people of Monroe County, and (emphasis added)

WHEREAS, the Board of County Commissioners of Monroe County, Florida, are able to finance, install, maintain and operate such a service, and (emphasis added)

WHEREAS, the distance and peculiar geographical features of Monroe County, Florida make it impossible for its citizens to have broad and acceptable direct television reception by any other method, now therefore,

(Continued on following page)

court held that the county had the power to construct and operate television broadcast translator stations. It is from this final declaratory judgment that Cable-Vision appeals.

The first issue for our consideration is whether Cable-Vision has an exclusive franchise to furnish all forms of television in Monroe County, stemming, not only from the agreement granting the franchise, but from legislative enactments under Chapters 65-1916 and 65-1927, Laws of Florida. If this be so, then the county's resolution to construct, maintain and operate television broadcast translator stations would be invalid because it would violate the terms of such legislative enactments and, in addition, the ordinance would be an unconstitutional impairment of the obligations of an existing contract. *Jarrell v. Orlando Transit Co.*, 1936, 123 Fla. 776, 167 So. 664.

Footnote continued—

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. The Board of County Commissioners of Monroe County, Florida, is hereby authorized and empowered to apply for and obtain the necessary licenses for the operation of television broadcast translator stations in Monroe County, Florida under Section 74.732 of the Federal Communications Rules and Regulations . . . said television broadcast translator stations being defined in Subsection (2) of Section 74.701 of said Federal Communications Rules and Regulations as follows:

(a) Television broadcast translator station. A station in the broadcasting service operated for the purpose of re-transmitting the signals of a television broadcast station, another television broadcast translator station, or a television translator relay station, by means of direct frequency conversion and amplification of the incoming signals without significantly altering any characteristic, of the incoming signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

Section 2. Said Board of County Commissioners is authorized and empowered to expend County monies necessary for the installation of and maintenance of television broadcast translator stations and related towers and buildings.” (emphasis added)

• • •

[1-5] Cable-Vision contends that it has an exclusive franchise from the county, and thus the county is barred from competing with Cable-Vision as well as from granting any competing franchises. We disagree. The county's agreement of March 9, 1965, purported to grant an exclusive franchise to Cable-Vision. This was, and obviously was so recognized, an ultra vires and invalid ordinance because, as the trial court declared, the power to regulate occupations and businesses by licensed franchises is a peculiar attribute of state sovereignty which requires state legislation. It would appear that this is why the Florida Legislature enacted Chapter 65-1916 which ratified the exclusive franchise agreement and subsequently enacted Chapter 65-1927 granting to Cable-Vision, by the State of Florida, a non-exclusive franchise. Since Chapter 65-1927 was the last expression of the legislature as far as the franchise enjoyed by the appellant is concerned, and since that act only granted a nonexclusive franchise whereas Chapter 65-1916 sought to grant or ratify an exclusive franchise granted by the appellee, the question arises as to which of the laws is paramount and which should be construed as controlling. The trial judge found that there was an inconsistency between Chapter 65-1916, Laws of Florida, 1965, and Chapter 65-1927. He construed the last expression of the legislature, to-wit: Chapter 65-1927, to be controlling and he did it upon the well recognized proposition of law that any such inconsistency should be resolved in favor of the last expression of the legislative will. In 30 Fla.Jur., Statutes § 210, Irreconcilable Provisions, it is stated:

"One important general rule in this regard (the reconciliation of inconsistent provisions) is that the last expression of the legislative will is the law, and that, therefore, the last in point of time or order of arrangement prevails. This rule is applicable where the irre-

concilable provisions appear in different statutes, or in different provisions of the same statute."

See also: *Johnson v. State*, 1946, 157 Fla. 685, 27 So.2d 276; *Overstreet v. Ty-Tan, Inc.*, Fla.1950, 48 So.2d 158; *State v. Board of Public Instruction of Escambia County*, Fla.1959, 113 So.2d 368; *Sharer v. Hotel Corporation of America*, Fla.1962, 144 So.2d 813. In view of the fact that Chapter 65-1916 provides for an exclusive franchise and Chapter 65-1927, which came after it, provides for a non-exclusive franchise, the court, under the statutory construction applicable, properly concluded that the franchise itself was not exclusive as to all forms of television reception. The franchise not being exclusive, it follows that the county agreement of 1965, and the legislative enactments do not give Cable-Vision an exclusive franchise to operate a cablevision system or a translator system. From the language of Chapter 65-1927, Cable-Vision only has a franchise to operate a cablevision system. Therefore, there can be no prohibition by virtue of the 1965 agreement and Chapters 65-1916 and 65-1927, for the county to construct, operate and maintain television broadcast translator stations. Cable-Vision contends that county ordinance 5-1973, authorizing translator stations is a constitutional impairment of contract. This is not so because the trial court found, after taking testimony, which was uncontroverted, that there was a distinct difference between a cablevision system and the operation of a television broadcast translator system. From the testimony it appears that a cable television system is a direct wire reception of television and a television broadcast translator system is an over-the-air broadcast facility which does not involve wire transmission by picking up television signals from the air for broadcast over the air. Furthermore, while it appears that the operation of translator stations could substantially



harm Cable-Vision's business, there is no evidence in the record to this effect.

[6] Cable-Vision next contends that the county did not have authority to authorize construction and to operate television broadcast translator stations; that Monroe County being a non-chartered county, has its power of self-government from Article VIII, § 1(f) of the 1968 Florida Constitution which provides:

"(f) Non-charter government. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict."

Cable-Vision contends that such authority to construct and operate television broadcast translator stations is not within one of the powers authorized by Article VIII of the Constitution, supra, and delegated under § 125.01(1)(f), (1)(w) and (3)(b), Fla.Stat., which provide in pertinent part:

"(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power shall include, but shall not be restricted to, the power to:

\* \* \*

(f) Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commissions, and other recreation and cultural facilities and programs;

\* \* \*

(w) Perform any other acts not inconsistent with law which are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.

\* \* \*

(3)(b) The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the state constitution."

Therefore, it is argued, this county ordinance # 5-1973 is invalid because it is inconsistent with a general or special law, namely Chapter 65-1916 and Chapter 65-1927, Laws of Florida. We disagree. The mere fact that Chapters 65-1916 and 65-1927 grant Cable-Vision a franchise, which we determine to be non-exclusive, to operate a cable television station, does not, in itself, prohibit the county from constructing and operating a television broadcast translator station especially where there is a difference between a cablevision system and a translator system.

Cable-Vision relies on the case of *Davis v. Gronemeyer*, Fla.1971, 251 So.2d 1. However, that case is distinguished from the instant case as there was an attempt by a non-charter county, under home rule, to repeal a special act of the legislature which created a civil service system of county employees contravening a special act of the legislature. Cable-Vision cites the case of *Byers v. Board of Supervisors of the County of San Bernardino*, 262 Cal.

App.2d 148, 68 Cal.Rptr. 548 (1968), which held that where the County Board of Supervisors sought an agreement to establish television broadcast translator stations under a somewhat similar provision of a California County Code, the county had no power or authority to provide translator stations by taxing its citizens. However, the Code involved in the *Byers* case did not include a provision for "recreational and cultural facilities and programs."

[7, 8] The county, in its ordinance # 5-1973, authorizing the Board of County Commissioners of Monroe County to construct and obtain the necessary licenses for the operation of television broadcast translator stations, recites that there are unsatisfactory conditions existing in the reception of direct television signals now available to the public in the county and that no television broadcast stations are operating in close enough proximity to Monroe County to effect any relief from this condition; that the county feels it should provide its citizens with the opportunity to obtain a better life by being more enlightened in the areas of political, cultural, social and educational communication available by broader access to the television media and that television broadcast translator stations provide the only means of receiving and transmitting such communication. Today, counties provide vast cultural and recreational facilities for the welfare of their citizens. Television does have educational programs and is virtually a necessary means of transmitting what is thought to be cultural enlightenment, and the mere fact that Cable-Vision has a franchise for a cable television system should not prevent the citizens of the county from obtaining other types of television service especially where the geographical and economic situation does not adequately provide access to such service. Determination of what is a county purpose may be express or implied in the pro-

visions of the ordinance. The courts will not interfere with such determination unless it has no legal or practical relationship to a valid county purpose. *State v. Brevard County*, 1930, 99 Fla. 226, 126 So. 353, 355.

Since the franchise to Cable-Vision was not exclusive, and there appears to be, in this case, a valid county purpose, the county has the authority, under constitutional self-government and § 125.01, Fla.Stat., to construct, maintain and operate television broadcast translator stations. The declaratory judgment of the trial court is affirmed except as to that part of the judgment which declares that Cable-Vision has an exclusive right to furnish cablevision services.

Affirmed in part and reversed in part.

## APPENDIX C

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, 1976

THURSDAY, MAY 27, 1976

CASE NO. 48,962

DISTRICT COURT OF APPEAL, THIRD DISTRICT

74-1408

CABLE-VISION, INC., ETC.,

Appellant,

vs.

WILLIAM A. FREEMAN, JR., ET AL., as and constituting

THE BOARD OF COUNTY COMMISSIONERS OF

MONROE COUNTY, ETC.,

Appellees.

Upon consideration of the Motion to Dismiss filed by attorneys for appellees and Response thereto, it is ordered that said motion is granted and this appeal be and is hereby dismissed.

OVERTON, C.J., ROBERTS, ADKINS, SUNDBERG AND HATCHETT, JJ., CONCUR

Y

CC: Hon. W. P. Carter, Clerk  
 Hon. Ralph W. White, Clerk  
 Hon. James Kehoe, Judge  
  
 Hon. Julius F. Parker, Jr.  
 Hon. Jack M. Skelding, Jr.  
 Hon. Paul E. Sawyer, Hon.  
 Mallory H. Horton  
 Hon. Paul Sawyer  
 Hon. Tom Harris

IN THE SUPREME COURT OF FLORIDA

JULY TERM, 1976

THURSDAY, JULY 8, 1976

CASE NO. 48,962

CABLE-VISION, INC., ETC.,

Appellant,

vs.

WILLIAM A. FREEMAN, JR., ET AL., as and constituting

THE BOARD OF COUNTY COMMISSIONERS OF

MONROE COUNTY, ETC.,

Appellees.

On consideration of the Petition Under Florida Statutes, Section 59.45 filed by attorneys for appellant and Response thereto,

IT IS ORDERED that said petition is denied.

Y

CC: Hon. W. P. Carter, Clerk  
 Hon. Ralph W. White, Clerk  
 Hon. James Kehoe, Judge  
 Hon. Julius F. Parker, Jr.,  
 Hon. Jack M. Skelding, Jr.  
 Hon. Mallory H. Horton,  
 Hon. Paul E. Sawyer  
 Hon. Paul E. Sawyer  
 Hon. Tom Harris



**APPENDIX D**

IN THE CIRCUIT COURT OF THE SIXTEENTH  
JUDICIAL CIRCUIT IN AND FOR  
MONROE COUNTY, FLORIDA

CASE NO. 73-786-CA-17

CABLE-VISION, INC., a Florida corporation, and TELE-  
MEDIA COMPANY OF KEY WEST LTD., its successor  
in interest,  
Appellants,

vs.

WILLIAM A. FREEMAN, JR., HARRY S. PRITCHARD,  
JOHN W. PARKER, HARRY HARRIS and WILLIAM  
CARTER, as and constituting THE BOARD OF COUNTY  
COMMISSIONERS OF MONROE COUNTY, a political  
subdivision of the State of Florida,  
Appellees.

**NOTICE OF APPEAL TO THE SUPREME COURT  
OF THE UNITED STATES**

I. Notice is hereby given that Cable-Vision, Inc., a  
Florida corporation, and Tele-Media Company of Key West  
Ltd., its successor in interest, the Appellants above named,  
hereby appeal to the Supreme Court of the United States  
from the Final Judgment of dismissal of appeal entered  
by the Supreme Court of Florida on May 27, 1976, and  
denial of rehearing thereon entered by the Supreme Court  
of Florida on July 8, 1976.

This Appeal is taken pursuant to 28 U. S. C. § 1257(2).

II. The Clerk will please prepare a transcript of the  
record in this cause, for transmission to the Clerk of the

Supreme Court of the United States, and include in said  
transcript the following:

1. Complaint for Declaratory Judgment dated October 3, 1973.
2. Motion to Strike and Answer of Cable-Vision, Inc. dated October 24, 1973.
3. Motion to Dismiss dated October 26, 1973.
4. Order dated December 18, 1973.
5. Memorandum of Law of the Attorney General dated February 25, 1974.
6. Memorandum Brief of Defendant, Cable-Vision, Inc. dated February 25, 1974.
7. Reply Memorandum of the Attorney General dated March 4, 1974.
8. Reply Memorandum Brief of Defendant, Cable-Vision, Inc., dated March 7, 1974.
9. Plaintiff's Memorandum dated May 6, 1974.
10. Final Declaratory Judgment dated March 25, 1974.
11. Notice of Appeal dated April 9, 1974.
12. Assignments of Error dated April 15, 1974.
13. Directions to the Clerk dated April 15, 1974.
14. Designations to Court Reporter dated April 15, 1974.
15. Transcript of Testimony of Final Hearing before the Circuit Court of Monroe County.
16. Opinion of Third District Court of Appeal dated December 9, 1975.

17. Petition for Rehearing dated December 22, 1975.
18. Order denying Petition for Rehearing dated January 22, 1976.
19. Notice of Appeal dated February 23, 1976.
20. Assignments of Error dated March 8, 1976.
21. Directions to the Clerk dated March 8, 1976.
22. Order of the Supreme Court of Florida dismissing Appeal dated May 27, 1976.
23. Petition of Cable-Vision, Inc. for Rehearing dated June 1, 1976.
24. Order of the Supreme Court of Florida denying Rehearing dated July 8, 1976.

III. The following questions are presented in this appeal.

1. Whether County Ordinance 5-1973 of Monroe County impairs the obligations of a previously existing contract, when the County has granted an exclusive franchise for cable-television services to Cable-Vision, Inc., and later passes an Ordinance authorizing the County to compete with its franchisee by constructing and operating translator stations financed by tax dollars.

2. Whether an act of the Florida Legislature impairs the obligations of previously existing contractual rights where a Florida Statute (Chapter 65-1916, Laws of Florida) ratified an exclusive franchise granted by Monroe County to Cable-Vision, Inc., and a later act of the Legislature (Chapter 65-1927, Laws of Florida), purports to grant a non-exclusive franchise directly from the State of Florida to the same franchisee. The District Court of Appeal for the Third District of Florida held that Chapter

65-1927, Laws of Florida superseded Chapter 65-1916, Laws of Florida, to the extent of converting an exclusive franchise to a non-exclusive franchise.

3. Whether a County Ordinance of Monroe County, Ordinance 5-1973, constitutes impairment of previously existing contractual rights granted to the franchisee, Cable-Vision, Inc., by Chapters 65-1916 and 65-1927, Laws of Florida.

/s/ Julius F. Parker, Jr.

Julius F. Parker, Jr.

Madigan, Parker, Gatlin, Truett  
& Swedmark

P. O. Box 669—318 N. Monroe Street  
Tallahassee, Florida 32302

Attorneys for Appellants, Cable-  
Vision, Inc. and Telemedia Com-  
pany of Key West

#### PROOF OF SERVICE

I, JULIUS F. PARKER, JR., one of the attorneys for Cable-Vision, Inc., a Florida corporation, and Telemedia Company of Key West, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of September, 1976, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto as follows:

1. On William A. Freeman, Jr., Harry S. Pritchard, John W. Parker, Harry Harris and William Carter, by mailing a copy in a duly addressed envelope, with first

class postage prepaid, to their attorneys of record as follows:

Mallory Horton, Esquire, Horton and Perse  
410 Concord Building, Miami, Florida 33130

Paul E. Sawyer, County Attorney for Monroe County  
P. O. Box 571, Key West, Florida 33040

2. On the State of Florida, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to Tom Harris, Esquire, Assistant Attorney General, Department of Legal Affairs, Civil Division, 222 West Pensacola Street, Tallahassee, Florida 32304.

/s/ Julius F. Parker, Jr.

Julius F. Parker, Jr.

Madigan, Parker, Gatlin, Truett  
& Swedmark

P. O. Box 669—318 N. Monroe Street  
Tallahassee, Florida 32302

Attorneys for Appellants, Cable-  
Vision, Inc. and Telemedia Com-  
pany of Key West

## APPENDIX E

### ORDINANCE NO. 5-1973

AN ORDINANCE RELATING TO MONROE COUNTY, FLORIDA; AUTHORIZING AND EMPOWERING THE BOARD OF COUNTY COMMISSIONERS OF SAID COUNTY TO APPLY FOR AND OBTAIN LICENSES FOR OPERATING TELEVISION BROADCAST TRANSLATOR STATIONS IN SAID COUNTY UNDER SECTION 74.732 FEDERAL COMMUNICATIONS RULES AND REGULATIONS, VOLUME 3, DATED SEPTEMBER, 1972 IN SAID COUNTY AND DEFINING TELEVISION BROADCAST TRANSLATOR STATIONS; AUTHORIZING SAID BOARD OF COUNTY COMMISSIONERS TO EXPEND MONIES NECESSARY FOR THE INSTALLATION AND MAINTENANCE OF TELEVISION BROADCAST TRANSLATOR STATIONS AND RELATED TOWERS AND BUILDINGS; EMPOWERING SAID BOARD OF COUNTY COMMISSIONERS TO PURCHASE OR LEASE LANDS NECESSARY FOR THE ERECTION OF SAID TELEVISION BROADCAST TRANSLATOR STATIONS AND TO ENTER INTO LEASE-PURCHASE, LEASE OR PURCHASE AGREEMENTS TO OBTAIN FEDERAL LICENSES FOR OPERATION OF SAID TELEVISION BROADCAST TRANSLATOR STATIONS; AUTHORIZING AND EMPOWERING SAID BOARD OF COUNTY COMMISSIONERS TO HIRE BY CONTRACT OR EMPLOY TECHNICAL CONSULTANTS AND ENGINEERS NECESSARY TO INSTALL AND OPERATE SAID TELEVISION BROADCAST TRANSLATOR STATIONS; AUTHORIZING AND EMPOWERING THE MAYOR AND CHAIRMAN AND



THE CLERK OF SAID BOARD TO SIGN ALL DOCUMENTS, INCLUDING WARRANTS FOR THE EXPENDITURES OF MONEY NECESSARY, REQUIRED UNDER THIS ORDINANCE; REQUIRING PROVISIONS OF THIS ORDINANCE TO BE LIBERALLY CONSTRUED; REPEALING ALL ORDINANCES, RESOLUTIONS, RULES AND REGULATIONS IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Monroe County, Florida, have by petition and other means has had called to its attention the unsatisfactory conditions existing in the reception of direct television signals now available to the public in said County, and

WHEREAS, there are no television broadcast stations operating in a close enough proximity to Monroe County to afford any relief from this condition, and

WHEREAS, the Board of County Commissioners of Monroe County, Florida, now has the opportunity to provide the residents of said County with adequate and satisfactory direct television reception through television translator systems, and

WHEREAS, the Board of County Commissioners of Monroe County, Florida feels it should provide its citizens the opportunity to obtain a better life by being more enlightened in the areas of political, cultural, social and educational commentary, available by broader access to the television media, and

WHEREAS, that part of Monroe County, Florida which consists of the Florida Keys is more than 120 miles in length from the County seat in Key West to the County line and its citizens and visitors are scattered throughout the islands which constitute this land area, and

WHEREAS, television broadcast translator stations provide the only means by which signals broadcast by television stations outside of our receiving area may be re-transmitted to areas in which direct reception of such television broadcast signals are now denied because of distance, and

WHEREAS, the Board of County Commissioners feel that educational television is necessary in the development of the educational and cultural background of the children of the County, and

WHEREAS, the transmission of television signals for direct reception is regulated by the Federal Communications Commission, and

WHEREAS, the Board of County Commissioners is empowered to obtain the necessary license under Section 74.732 of the Federal Communications Rules and Regulations, Volume 3, dated September, 1972, which would allow the Board of County Commissioners to correct this present denial of direct television service to the people of Monroe County, and

WHEREAS, the Board of County Commissioners of Monroe County, Florida, are able to finance, install, maintain and operate such a service, and

WHEREAS, the distance and peculiar geographical features of Monroe County, Florida make it impossible for its citizens to have broad and acceptable direct television reception by any other method, now therefore,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. The Board of County Commissioners of Monroe County, Florida is hereby authorized and empowered to apply for and obtain the necessary licenses for the operation of television broadcast translator stations in Mon-

roe County, Florida under Section 74.732 of the Federal Communications Rules and Regulations, Volume 3, dated September, 1972, in Monroe County, Florida, said television broadcast translator stations being defined in Subsection (a) of Section 74.701 of said Federal Communications Rules and Regulations as follows:

- (a) Television broadcast translator station. A station in the broadcasting service operated for the purpose of retransmitting the signals of a television broadcast station, another television broadcast translator station, or a television translator relay station, by means of direct frequency conversion and amplification of the incoming signals without significantly altering any characteristic, of the incoming signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

Section 2. Said Board of County Commissioners is authorized and empowered to expend County monies necessary for the installation of and maintenance of television broadcast translator stations and related towers and buildings.

Section 3. Said Board of County Commissioners is empowered to purchase, or lease, any lands necessary for the erection of said television broadcast translator stations and to enter into lease-purchase, lease or purchase agreements for any and all equipment necessary to obtain the proper Federal licenses necessary for the operation of said television broadcast translator stations.

Section 4. In carrying out the provisions of this Ordinance, said Board of County Commissioners is hereby authorized and empowered to hire by contract or employment the necessary technical consultants and engineers to insure the proper and adequate installation and operation

of said television broadcast translator stations in order to provide full, adequate, and satisfactory direct television reception to the citizens of Monroe County, Florida.

Section 5. The Mayor and Chairman and the Clerk of said Board of County Commissioners of Monroe County, Florida, are authorized and empowered to sign any and all documents, including warrants for the expenditures of monies, necessary to carry out the purposes of this Ordinance.

Section 6. The provisions of this Ordinance shall be liberally construed in order to effectively carry out the purposes of this Ordinance in the interest of the public.

Section 7. All Ordinances, Resolutions, rules and regulations in conflict herewith are hereby repealed to the extent of said conflict.

Section 8. After its adoption, this Ordinance shall take effect upon receipt of the official acknowledgment from the Department of State acknowledging receipt of certified copy of this Ordinance and that said Ordinance has been filed in said office.

## APPENDIX F

### CHAPTER 65-1916

#### HOUSE BILL NO. 2859

AN ACT giving to the county commissioners of Monroe county the power to grant franchises or licenses for the establishment, maintenance and operation of community antenna systems, closed circuit or cable television systems, or any other similar communication or distribution systems or services; prohibiting munic-



ipalities from granting franchises or licenses in conflict with those granted by the county commissioners; providing a maximum term for such franchises or licenses; providing for renewal of such franchises or licenses at the end of said term; providing for the manner and method of terminating such franchises or licenses; ratifying prior agreements in the nature of franchise or license rights in existence at the time this act takes effect; repealing all laws or parts of laws in conflict herewith, and providing for the effective date of this act.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. The county commissioners of Monroe county whenever it shall be made to appear to them that the convenience of the public requires the establishment, maintenance and operation within the county of a community antenna system or systems, closed circuit or cable television system or systems, or any other similar communication or distribution systems or services are hereby given the power to grant by resolution a franchise or license to any company, corporation, partnership or individual who shall make application to the county commissioners for such franchise or license and demonstrate to the county commissioners in support of said application that the applicant is financially responsible and presently capable of carrying the purposes of the franchise or license into execution.

Section 2. The county commissioners of Monroe county shall not give or grant any franchise or license as described in section 1 or any renewal thereof for any term exceeding thirty years, or without reserving the right and requiring the grantee of such franchise or license, as a condition precedent of the taking effect of the grant, to give and grant to the county the right at the end of the

term for which any franchise is granted to purchase at fair market value all the property and property rights of any such franchised or licensed operation held and used in connection with the grant of the franchise or license involved wherever such property or property rights are located.

In the event the franchised or licensed business involved is operating or then presently capable of being operated as a going concern at the end of the franchise or license term, the fair market value shall be based upon the value of the said property and property rights considered together as a functioning business entity and not upon the value of each separate item of such property considered without reference to the franchised or licensed business as a functioning business entity.

In determining the fair market value, if the county commissioners and the grantee cannot agree then the county commissioners and the grantee shall each name an appraiser, and the two appraisers so named shall name a third appraiser who shall be a disinterested person. All three appraisers must be persons of high standing and integrity with experience in property evaluation. The three appraisers so named shall after a thorough investigation fix the value of the said property and property rights as a functioning business entity. If after a reasonable period the named appraisers cannot agree as to the value, then they shall be discharged and the county commissioners and the grantee shall name other appraisers in the same manner. This method of naming and discharging appraisers shall continue until agreement as to the value is reached.

Section 3. The county commissioners under the exercise of the power given by this act may grant an exclusive or limited franchise or license, operating in either a portion



or throughout the limits of Monroe county, including municipalities therein. The franchise or license rights contemplated by this act when granted within the purview hereof shall continue in such grantee, or personal representatives, successors or assigns for the full term granted; provided, however, that the county commissioners and the grantee of any such franchise or license shall have the right at any time to make any subsequent agreement, not contrary to this act, respecting the franchise or license that the parties deem mutually advantageous to all concerned affecting the operation of the franchised or licensed system or service, and the franchise or license mutually agreed upon and approved by virtue of any such subsequent agreement may be extended for a full term not to exceed thirty years from the date of such subsequent agreement. Any such subsequent agreement must be voluntarily approved by the county commissioners and by the grantee, and, if so approved, it then must be adopted by resolution of the county commissioners.

Section 4. No municipality in Monroe county shall give or grant any franchise or license for any purpose which is contrary to or in conflict with any franchise or license granted by the county commissioners or contrary to or in conflict with any provision of this act governing the grant of a franchise or license by the county commissioners of Monroe county.

Section 5. The county commissioners shall not give or grant any new or additional franchise or license, or any new or additional franchise or license rights provided for in this act, which shall tend to lessen or impair the quality or the efficiency of operation of a system or service being offered and used by the inhabitants of Monroe county under an existing franchise or license, or which shall have any undue adverse impact upon or which shall seriously interfere with the primary business purposes, operation,

or income of any then existing licensee or franchise holder, or which shall cause an undue adverse impact upon or seriously limit or restrict the normal or natural growth, development and income, or adaptation to changing circumstances with respect to matters within the ambit of the primary business purpose, operation or income of any such existing licensee or franchise holder, or which shall directly impair or depreciate the value of any property or property right owned by any such existing licensee or franchise holder. The term "existing licensee or franchise holder" for the purposes of this act shall include those hereafter granted pursuant to this act, from and after its effective date, as well as any franchise, license or other agreement in the nature thereof existing at the time of the passage of this act and ratified hereunder.

Any resolution or agreement in the nature of a franchise or license in existence at the time this act is passed between the county commissioners of Monroe county and any company, corporation, partnership or individual for the establishment, maintenance and operation of a community antenna system, closed circuit or cable television or any other similar communication or distribution system or service is hereby expressly ratified and confirmed in such company, corporation, partnership or individual.

Section 6. In addition to the power to purchase as provided in section 2 of this act, the county commissioners are hereby granted the power to renew any existing franchise or license or to grant a new franchise or license for the continuation of the system or service then being operated under an expiring franchise or license at the end of the term of the expiring franchise or license involved on such terms as are reasonable and just. In the event the county commissioners determine to renew an existing franchise or license or to grant a new franchise or license for the continuation of the particular system or service the

commissioners shall give the first option to the grantee then holding and operating the desired system or service under the particular franchise or license concerned to renew the existing franchise or license or to accept the new franchise or license to be granted.

Section 7. The county commissioners at a time no earlier than thirty months nor later than twenty-four months prior to the expiration date of any franchise or license given or granted under this act or ratified hereunder shall give to the grantee thereof at the grantee's principal business office written notice of the county commissioners' election either to purchase or to renew the expiring franchise or license or to grant a new franchise or license for the continuation of the system or service under the expiring franchise or license involved. In the event the written notice is not given within the time provided herein, the expiring franchise or license involved automatically will be renewed for an additional period equal to the original franchise period and subject to the same terms contained in the franchise or license involved prior to its original expiration date.

It is provided, however, that the provisions of this section shall not in any way limit or restrict the provisions of section 3 of this act concerning the right or authority of the county commissioners and the grantee of any franchise or license at any time to enter into a subsequent mutual agreement to extend or renew such franchise or license or for any other purpose within the purview of this act.

Section 8. If any section of this act or any sentence, word, phrase or part thereof is for any reason held or declared to be unconstitutional, invalid or void, it is declared to be the specific legislative intent that such unconstitutional, invalid or void portion shall not be con-

strued to affect the remaining provisions of this act and that the act be construed and applied as if the unconstitutional, invalid or void portions had never been enacted.

Section 9. All laws or parts of laws in conflict herewith are hereby repealed.

Section 10. This act shall take effect immediately upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 25, 1965.

## APPENDIX G

### CHAPTER 65-1927

#### SENATE BILL NO. 1294

AN ACT granting to Cable-Vision, Inc., a Florida corporation, the right, privilege, license and franchise, for a period of thirty (30) years for the operation of a cable television system throughout Monroe county, Florida, and all municipalities therein, including the furnishing of direct wire reception of television, radio, music, closed circuit programs, signals, and similar services, together with necessary rights to erect and maintain poles, wires, fixtures, towers, amplifiers, electronic equipment, etc., along the streets, alleys, avenues and highways and other public places throughout the county and all municipalities therein; providing the terms and conditions of such franchise; prescribing charges and service rates; providing for taxes; providing for termination and lease of this franchise and providing an effective date.



*Be It Enacted by the Legislature of the State of Florida:*

Section 1. Whenever used in this act the following terms or words shall have the meaning herein ascribed to them unless the context or the particular provision in which they are used expressly provides to the contrary. The terms grantee or franchise holder shall mean and be used interchangeably with Cable-Vision, Inc., its successors or assigns, as the case may be. County shall mean Monroe county, Florida. County Commissioners shall mean the County Commissioners of Monroe county, Florida.

Section 2. Cable-Vision, Inc., a Florida corporation, its successors or assigns is granted for a period of thirty (30) years and during the period of any renewals and extensions thereof as may hereafter be authorized, the right, privilege, license, and franchise to furnish direct wire reception of television, radio, music, closed circuit programs, signals, and services to the inhabitants of Monroe county, or any person, firm or corporation within said county limits, including the municipalities therein, by: (1) programs and services originating in Monroe county and elsewhere which consist of either live, transcribed, recorded, film and/or other means, (2) programs and services received by wire, microwave, or cable from outside of the county limits of Monroe county, (3) programs and services received by relay, and (4) by the means of the establishment of a master antennae, utilizing a master control unit and amplifier and relaying the signals and services directly to the subscriber, together with the rights to erect and maintain such poles, wires, fixtures, towers, amplifiers, electronic equipment, etc., on, above and below the streets, avenues, highways, roads and other public places within said county and all municipalities therein for the purpose of erecting, constructing, laying, owning, leasing, or otherwise repairing, maintaining and operating such system, all such right and use to be and to continue

on the conditions and terms as herein stated, and providing further that existing or hereafter erected utility poles, underground and other, and facilities may be used with the permission of the owners thereof.

Section 3. The poles and wires described in section 2 of this act shall be placed and maintained so as not to interfere with travel or use of such streets, avenues, alleys, roads, highways and other public places of said county and the municipalities therein, and Cable-Vision, Inc., shall hold the county and the municipalities therein free and harmless from damages arising from any abuse or negligence of Cable-Vision, Inc. The poles and wires shall be placed so as not to interfere with the flow of water in any sewer, drain or gutter or with any gas or water pipe lines, and this grant is made and is to be enjoyed subject to all such reasonable rules, regulations and resolutions of a police nature as said county may authorize or may see proper from time to time to adopt, not destructive of the rights herein granted.

Section 4. The franchise holder, its successors and assigns, shall have the authority, right and privilege to charge for installation and services the following contribution costs and service rates:

#### INSTALLATION

\$150.00 exclusive of all taxes and licenses for contribution for installation in each individual home; provided, however, that the location thereof shall not require labor and/or materials in excess of that provided for in the current rate schedules of the company. If additional labor and/or materials are required, the company may require an additional contribution.

\$175.00 exclusive of all taxes and licenses for contribution for installation in each commercial place of busi-

ness or combination business and home; provided, however, that the location thereof shall not require labor and/or materials in excess of that provided for in the current rate schedules of the company. If additional labor and/or materials are required, the company may require an additional contribution.

The franchise holder is hereby authorized to lower or raise the contribution as herein provided but shall not raise them beyond the maximum set forth herein without approval of the board of county commissioners; it being understood, however, that if the location of the installation is beyond one hundred fifty feet from the main distribution system of the company and/or requires labor and/or materials in excess of that provided for in the current rate schedules of the company, the company may raise the installation charges thereof without further approval of the board of county commissioners; exclusive of all taxes and licenses.

The contribution hereinabove provided is for the installation of one outlet only. The franchise holder is hereby authorized to require an additional contribution for the installation of additional outlets, other work, special installations and/or to furnish special programs and services now or hereafter made available when requested by the subscriber.

The franchise holder is hereby authorized to classify the installation cost or fee as a "contribution in aid of construction". The franchise holder is also hereby authorized to designate as a "special installation" any installation requiring labor and/or materials in excess of that provided for in the current rate schedules of the company.

## SERVICE RATES

\$6.95 per month for individual homes where franchise holder provides one channel and/or service.

\$10.00 per month for commercial place of business or combination business and home, where franchise holder provides one channel and/or service.

The franchise holder is hereby authorized, without further authority from or notice to the board of county commissioners, to increase the service rates to provide for additional costs of operation and/or as additional channels, services or facilities are installed, but in no event shall such monthly rates be more than \$7.50 per month per channel and/or service for the individual in a home, exclusive of fees, licenses, and costs, now or hereafter applicable, for special programs, closed circuit programs, special services, and music services, and exclusive of all taxes and licenses; and, not to exceed the sum of \$10.00 per month per channel and/or service for the individual user and consumer in a commercial place of business or combination business and home, exclusive of fees, licenses, and costs, now or hereafter applicable, for special programs, closed circuit programs, special services, and music services, and exclusive of all taxes and licenses.

The franchise holder is hereby authorized to lower or raise the monthly rates as herein provided, but shall not raise them beyond the maximum set forth herein without approval of the board of county commissioners; it being understood, however, that if the location of the installation is beyond one hundred fifty feet from the main distribution system of the company and/or requires labor and/or materials in excess of that provided for in the current rate schedules of the company, the company may raise the monthly service charges thereof without further approval



of the board of county commissioners; exclusive of all taxes and licenses, special programs, closed circuit programs, special services and music services.

The monthly rates hereinabove provided are for furnishing service to one outlet on the premises of each individual subscriber. The franchise holder is hereby authorized to charge additional monthly service rates for service to additional outlets and special installations. The franchise holder may also make additional charges to those subscribers who desire to receive special programs and services now or hereafter made available.

### TAXES

The contributions and monthly service rates hereinabove set forth do not include Federal, State, or County excise taxes, fees and licenses, wire taxes and other taxes and licenses imposed on the subscriber of the company now or in the future.

Section 5. The county commissioners shall have the right to terminate this franchise at the expiration of the term provided herein, or at the expiration of any extensions or renewals subsequently granted, upon purchasing at fair market value all the property and property rights of the grantee held and used in connection with this franchise wherever such property or property rights are located, which property or rights shall include but shall not be limited to all franchises, leases and contracts for service fairly and reasonably made by the grantee in connection with its operation under the franchise granted by this act.

In the event Cable-Vision, Inc., its successors or assigns, is operating or is capable of being operated at the expiration of the term of this franchise as provided herein or as extended or renewed by subsequent grant, and the

county commissioners should elect to purchase as provided herein, the fair market value shall be based upon the value of the said property and property rights considered together as a functioning business entity and not upon the value of each separate item of such property considered without reference to the franchised or licensed business as a functioning business entity.

In determining the fair market value, if the county commissioners and the grantee cannot agree then the county commissioners and the grantee shall each name an appraiser, and the two appraisers so named shall name a third appraiser who shall be a disinterested person. All three appraisers must be persons of high standing and integrity with experience in property evaluation. The three appraisers so named shall after a thorough investigation fix the value of the said property and property rights as a functioning business entity. If after a reasonable period the named appraisers cannot agree as to the value, then they shall be discharged and the county commissioners and the grantee shall name other appraisers in the same manner. This method of naming and discharging appraisers shall continue until agreement as to the value is reached.

Section 6. The operations of Cable-Vision, Inc. in supplying the inhabitants of Monroe county with television, radio, music, closed circuit programs, signals, services and facilities, and in using the streets and public places of said county and the municipalities therein in supplying said television, radio, music, closed circuit programs, signals, services and facilities, shall not be considered as a public utility, and such operations shall be conducted under the franchise hereby granted, and shall be held by the grantee, so long as the grantee complies with all the provisions set forth in this franchise. It is further provided that the county commissioners and the grantee



shall have the right at any time to make any subsequent agreement, not contrary to law, respecting this franchise that is deemed mutually advantageous to all concerned affecting the operation of the franchise, and the franchise mutually agreed upon and approved by virtue of any such subsequent agreement may be extended or renewed for a full term not to exceed thirty years from the date of such subsequent agreement. Any such subsequent agreement must be voluntarily approved by the county commissioners and by the grantee, and, if so approved, it then must be adopted by resolution of the county commissioners.

Section 7. No municipality in Monroe county shall give or grant any franchise or license for any purpose which is contrary to or in conflict with this franchise or contrary to or in conflict with any provision of law governing the grant of a franchise or license by the county commissioners of Monroe county.

Section 8. The county commissioners shall not give or grant any new or additional franchise or license, or any new or additional franchise or license rights which shall tend to lessen or impair the quality or the efficiency of operation of the business being operated by the grantee under this franchise, or which shall have any undue adverse impact upon or which shall seriously interfere with the primary business purposes or operation of this franchise or the income of the franchise holder, or which shall cause an undue adverse impact upon or seriously limit or restrict the normal or natural growth or development or adaptation to changing circumstances with respect to matters within the ambit of the primary business purpose or operation of this franchise, or which shall directly impair or depreciate the value of any property or property rights owned by the franchise holder.

Section 9. In addition to the power to purchase as provided in section 5 of this act, the county commissioners are hereby granted the power to renew this franchise or to grant a new franchise or license for the continuation of the business then being operated under this franchise at the expiration of the term of this franchise on such terms as are reasonable and just. In the event the county commissioners determine to renew this franchise or to grant a new franchise or license for the continuation of the particular business then being operated by the grantee herein the commissioners shall give the first option to the grantee herein to renew this franchise or to accept the new franchise or license to be granted by the commissioners.

Section 10. In the event the county annexes any territory subsequent to this grant or any extension or renewal thereof, any portion of the operation of the franchise holder that may be located within such annexed territory and upon the streets, alleys, and public grounds thereof shall thereafter be subject to all the terms of the grant as though it were an extension made thereunder.

Section 11. The county commissioners at a time no earlier than thirty months nor later than twenty-four months prior to the expiration date of this franchise shall give to the grantee herein at the grantee's principal business office written notice of the county commissioners' election either to purchase or to renew this franchise or of the commissioners' intent to grant a new franchise or license for the continuation of the business being operated under this franchise. In the event the written notice is not given within the time provided herein, the franchise herein granted automatically will be renewed for an additional period equal to the original franchise period.

provided herein and subject to the same terms contained in this act.

It is provided, however, that the provisions of this section shall not in any way limit or restrict the provisions of section 5 of this act concerning the right or authority of the county commissioners and the grantee herein to enter into a subsequent mutual agreement to extend or renew this franchise or for any other purpose within the purview of this act.

Section 12. It is declared to be the legislative intent that, if any section, subsection, sentence, clause, or provision of this act is held invalid, the remainder of the act shall not be affected.

Section 13. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

Section 14. The provisions of this act shall be liberally construed in order to effectively carry out the purposes of this act in the interest of the public.

Section 15. This act shall take effect immediately upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 25, 1965.

## APPENDIX H

### AGREEMENT

THIS AGREEMENT, Made and entered into this 9th day of March, A.D. 1965, by and between the COUNTY OF MONROE, STATE OF FLORIDA, a political subdivision of the State of Florida, and CABLE-VISION, INC., a corporation duly organized and existing under the laws of the State of Florida, having its principal place of business in the County of Monroe, State of Florida, WITNESSETH:

WHEREAS, the County of Monroe, State of Florida, owns, has custody of and maintains public roads, highways, streets and bridges in the County of Monroe, State of Florida, and

WHEREAS, the County of Monroe, State of Florida, in order to promote the welfare, morale and convenience of the citizens of Monroe County, Florida, acting by and through its Board of County Commissioners, has heretofore duly authorized the execution of this Agreement, now, therefore,

The County of Monroe, State of Florida, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid to it by Cable-Vision, Inc., does hereby grant to said Cable-Vision, Inc., an exclusive franchise for the operation of a cable television system in Monroe County, Florida, under the following terms and conditions:

Section 1. Effective upon the date of the execution of this Agreement, Cable-Vision, Inc., a Florida Corporation, be, and it is hereby granted for a period of 30 years and any renewals and extensions thereof as authorized by the Laws of the State of Florida, the right, privilege,



license, and/or franchise to furnish direct wire reception of television, radio, music, closed circuit programs, signals, and services to the inhabitants of the County of Monroe, Florida, or any person, firm or corporation within said county limits: (1) programs and services originating in Monroe County and elsewhere which consist of either live, transcribed, recorded, film and/or other means, (2) programs and services received by wire, microwave, or cable from outside of the county limits of the County of Monroe, Florida, (3) programs and services received by relay, and (4) by the means of the establishment of a master antennae, utilizing a master control unit and amplifier and relaying the signals and services directly to the subscriber, together with the rights to erect and maintain such poles, wires, fixtures, towers, amplifiers, electronic equipment, etc., along the streets, avenues, alleys, roads and highways and other public places of the county, as may be necessary and/or convenient for the operation of its business in supplying television, radio, music, closed circuit programs, signals and services to the inhabitants of said county and the public in general, and to use and occupy for its television cables, poles, wires, fixtures, amplifiers, towers, electronic equipment, etc., the streets, alleys, avenues, highways, roads and other public places within said county for the purpose of erecting, constructing, laying, owning, leasing, or otherwise repairing, maintaining and operating such system, all such right and use to be and to continue on the conditions and terms as herein stated, and providing further that existing or hereafter erected utility poles and facilities may be used with the permission of the owners thereof.

Section 2. Said poles and wires shall be placed and maintained so as not to interfere with travel or use of such streets, avenues, alleys, roads, highways and other public places of said county and the said Cable-Vision, Inc. shall

hold said county free and harmless from damages arising from any abuse or negligence of the said Cable-Vision, Inc.; that said poles and wires shall be placed so as not to interfere with the flow of water in any sewer, drain or gutter or with any gas or water pipe lines, and this grant is made and is to be enjoyed subject to all such reasonable regulations and resolutions of a police nature as said county may authorize or may see proper from time to time to adopt, not destructive of the rights herein granted.

Section 3. That the franchise holder, its successors and assigns, shall have the authority, right and privilege to charge for installation and services the following contribution costs and service rates:

#### INSTALLATION

\$150.00 exclusive of all taxes and licenses for contribution for installation in each individual home; provided, however, that the location thereof shall not require labor and/or materials in excess of that provided for in the current rate schedules of the company. If additional labor and/or materials are required, the company may require an additional contribution.

\$175.00 exclusive of all taxes and licenses for contribution for installation in each commercial place of business or combination business and home; provided, however, that the location thereof shall not require labor and/or materials in excess of that provided for in the current rate schedules of the company. If additional labor and/or materials are required, the company may require an additional contribution.

The franchise holder is hereby authorized to lower or raise the contribution as herein provided but shall not raise them beyond the maximum set forth herein without further approval of the Board of County Com-



missioners; it being understood, however, that if the location of the installation is beyond 150 feet from the main distribution system of the company and/or requires labor and/or materials in excess of that provided for in the current rate schedules of the company, the company may raise the installation charges thereof without further approval of the Board of County Commissioners; exclusive of all taxes and licenses.

The contribution hereinabove provided is for the installation of one outlet only. The franchise holder is hereby authorized to require an additional contribution for the installation of additional outlets, other work, special installation and/or to furnish special programs and services now or hereafter made available when requested by the subscriber.

The franchise holder is hereby authorized to classify the installation cost or fee as a "contribution in aid of construction". The franchise holder is also hereby authorized to designate as a "special installation" any installation requiring labor and/or materials in excess of that provided for in the current rate schedules of the company.

#### SERVICE RATES

\$6.25 per month for individual homes where franchise holder provides 1 channel and/or service.

\$10.00 per month for commercial place of business or combination business and home, where franchise holder provides 1 channel and/or service.

The franchise holder is hereby authorized, without further authority from or notice to the Board of County Commissioners, to increase the service rates to provide for additional costs of operation and/or as additional channels, services or facilities are installed,

but in no event shall such monthly rates be more than \$7.50 per month per channel and/or service for the individual in a home, exclusive of fees, licenses, and costs, now or hereafter applicable, for special programs, closed circuit programs, special services, and music services, and exclusive of all taxes and licenses; and, not to exceed the sum of \$10.00 per month per channel and/or service for the individual user and consumer in a commercial place of business or combination business and home, exclusive of fees, licenses, and costs, now or hereafter applicable, for special programs, closed circuit programs, special services, and music services, and exclusive of all taxes and licenses.

The franchise holder is hereby authorized to lower or raise the monthly rates as herein provided, but shall not raise them beyond the maximum set forth herein without further approval of the Board of County Commissioners; it being understood, however, that if the location of the installation is beyond 150 feet from the main distribution system of the company and/or requires labor and/or materials in excess of that provided for in the current rate schedules of the company, the company may raise the monthly service charges thereof without further approval of the Board of County Commissioners; exclusive of all taxes and licenses, special programs, closed circuit programs, special services and music services.

The monthly rates hereinabove provided are for furnishing service to one outlet on the premises of each individual subscriber. The franchise holder is hereby authorized to charge additional monthly service rates for service to additional outlets and special installations. The franchise holder may also make additional

charges to those subscribers who desire to receive special programs and services now or hereafter made available.

### TAXES

The contributions and monthly service rates hereinabove set forth do not include Federal, State, or County excise taxes, fees and licenses, wire taxes and other taxes and licenses imposed on the subscriber or the company now or in the future.

Section 4. The County of Monroe, Florida, reserves the right to terminate this grant upon purchasing at fair market value all the property and property rights of the said Cable-Vision, Inc. held and used in connection with this grant, as well as extensions thereof within the county, and including all franchises, leases and contracts for service fairly and reasonably made in good faith by the said Cable-Vision, Inc., in connection with this franchise.

Section 5. The operations of Cable-Vision, Inc. in supplying the inhabitants of the County of Monroe, Florida, with television, radio, music, closed circuit programs, signals, services and facilities, and in using the streets and public places of said county in supplying said television, radio, music, closed circuit programs, signals, services and facilities, shall not be considered as a public utility, and such operations shall be conducted under a permissive license, hereby granted, and to be held by the said Cable-Vision, Inc. as long as it complies with all the provisions set forth in this Agreement.

Section 6. This grant or franchise shall not be leased, assigned or otherwise alienated except with the consent of the Board of County Commissioners as expressed by Resolution, but this Commission hereby consents, under

this Agreement, to the assignment of the right, privilege, license, and franchise herein granted to Cable-Vision, Inc. to Key West Television Cable Co.

Section 7. That upon the annexation of any territory to the County, the portion of any such operation of the franchise holder that may be located within such annexed territory and upon the streets, alleys, and public grounds thereof shall thereafter be subject to all the terms of the grant as though it were an extension made thereunder.

Section 8. This Agreement shall go into effect immediately upon its passage and adoption.

IN WITNESS WHEREOF, the County of Monroe, State of Florida, has caused this Agreement to be executed in its behalf by its Chairman and the seal of the County of Monroe, State of Florida, to be hereto affixed and attested by its Clerk, and Cable-Vision, Inc., has caused this Agreement to be executed in its behalf by its President and its corporate seal to be affixed, and attested by its Assistant Secretary, all as of the 9th day of March, A. D. 1965.

County of Monroe,

State of Florida

By /s/ (Illegible)

Chairman of the Board of County  
Commissioners of Monroe County,  
Florida

Attest:

/s/ Earl R. Adams

As Clerk of the Circuit Court of the Sixteenth  
Judicial Circuit of the State of Florida, in and for  
Monroe County, and ex officio Clerk of the Board  
of County Commissioners of Monroe County,  
Florida

(Seal)

Cable-Vision, Inc.

By /s/ (Illegible)

(Seal)

President

/s/ Constance W. Weatherford

Assistant Secretary

Signed, Sealed and Delivered in the Presence of:

/s/ (Illegible)

/s/ (Illegible)

/s/ (Illegible)

/s/ (Illegible)

As to Cable-Vision, Inc.

As to Monroe County, Florida